

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

JERRY ELLIOTT,

Plaintiff,

v.

TURNER INDUSTRIES GROUP, LLC,

Defendant.

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CIVIL ACTION NO. 2:20-CV-00367-RWS

ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge (Docket No. 19), which contains his findings, conclusions and recommendations concerning Defendant Turner Industries Group, LLC's Motion to Dismiss for Failure to Prosecute (Docket No. 11). Plaintiff Jerry Elliot filed the above-captioned civil action alleging age discrimination against Defendant. *See, e.g.*, Docket No. 1. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

On May 20, 2021, Plaintiff agreed to initiate arbitration within 120 days of the Court granting the parties' Joint Motion to Stay the Proceedings and Proceed with Arbitration. Docket No. 9. The next day, the Court granted the parties' joint motion and directed Plaintiff to initiate arbitration "without unnecessary delay." Docket No. 10. Plaintiff, however, failed to initiate arbitration as ordered. Defendant filed the present motion to dismiss for failure to prosecute thereafter. Docket No. 11. In his initial opposition to Defendant's motion, Plaintiff asserted, without any supporting evidence, that Defendant "agreed to contact Plaintiff to arrange for an agreed arbitration proceeding," but failed to do so. Docket No. 12. Defendant denied any such agreement. Docket No. 13. Plaintiff then later conceded his counsel "was ordered to initiate arbitration." Docket No. 14 at ¶ 8. "Plaintiff's counsel [further] recognize[d] that he will be required to unilaterally file for arbitration, without cooperation from defense counsel." *Id.*

After reviewing the pleadings, the Magistrate Judge issued a report that recommended granting Defendant's Motion to Dismiss (Docket No. 11) and dismissing Plaintiff's claims with prejudice. Docket No. 19. Plaintiff filed objections in response. Docket No. 27. Having reviewed the Magistrate Judge's report and Plaintiff's objections thereto, the Court hereby adopts the Report and Recommendation of the Magistrate Judge (Docket No. 19) as the findings and conclusions of this Court. In his objections, Plaintiff argues that the Court may not impose independent rules to control arbitration. Docket No. 27 (citing *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708 (2022)). Plaintiff's reliance on *Morgan* is, however, misplaced. *Morgan* is specifically inapplicable because it concerns a waiver of the contractual right to arbitrate, which is not implicated here. See generally *Morgan*, 142 S. Ct. 1708.

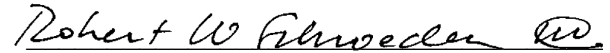
A district court may dismiss an action when a litigant fails to prosecute or comply with any order of the court. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988); FED. R. CIV. P. 41(b). The Federal Arbitration Act grants the district court authority to compel arbitration. 9 U.S.C. § 4. Here, Plaintiff was ordered to initiate arbitration "without unnecessary delay," and eighteen months have since passed. Docket No. 10. Plaintiff, therefore, failed to comply with the Court's Order. And the Magistrate Judge accordingly recommended granting Defendant's motion to dismiss for failure to prosecute (Docket No. 11). Docket No. 19. Plaintiff's objections (Docket No. 27) do not otherwise demonstrate that the Report and Recommendation of the Magistrate Judge was erroneous.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge's proposed findings and recommendations to which the Plaintiff objected. See 28 U.S.C. § 636(b)(1) (explaining that a district judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). Upon such review, the Court has determined that the Report of the Magistrate Judge is correct and Plaintiff's objections are without merit. Accordingly, it is

ORDERED that Plaintiff's objections (Docket No. 27) are **OVERRULED**, and the Report of the Magistrate Judge (Docket No. 19) is **ADOPTED** as the opinion of the District Court. It is

further **ORDERED** that Defendant's Motion to Dismiss for Failure to Prosecute (Docket No. 11) is hereby **GRANTED**.

So ORDERED and SIGNED this 2nd day of December, 2022.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE